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9 Attorneys for Plaintiff

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA, ) No. CR 10-0565-9 JSW  
13 Plaintiff, )  
14 v. ) **ORDER OF COMMITMENT AND  
15 EXCLUSION OF TIME UNDER THE  
SPEEDY TRIAL ACT**  
16 KAN WEN CHONG, aka Kenny, )  
17 Defendant. )  
18 \_\_\_\_\_ )

19 In a report dated July 25, 2011, Dr. Eddie Chiu, Ph.D., a clinical psychologist selected by  
20 the defense lawyer, concluded that defendant has a Major Depressive Disorder and an Anxiety  
21 Disorder. Dr. Chiu questioned defendant's abilities to understand and be cooperative in the trial  
22 process, and to assist his attorney in his defense.

23 On October 14, 2011, this Court ordered that a licensed and impartial psychiatrist or  
24 psychologist selected by Pretrial Services examine defendant Kan Wen Chong ("defendant") to  
25 determine whether he is presently suffering from a mental disease or defect rendering him mentally  
26 incompetent to the extent that he is unable to understand the nature and consequences of the  
27 proceedings against him or to assist properly in his defense. In her report dated November 21, 2011,  
28

1 Dr. Anna Glezer, M.D., a neutrally-selected psychiatrist from the Department of Psychiatry,  
2 University of California, San Francisco, determined that the defendant suffers from a Major  
3 Depressive Disorder with Psychotic Features and that he does not understand the nature of the  
4 proceedings against him. Dr. Glezer concluded that the defendant is not currently mentally  
5 competent to stand trial. This Court scheduled a competency hearing for April 17, 2012.

6 On April 13, 2012, this Court re-scheduled the competency hearing to May 31, 2012 to  
7 permit re-evaluations of the defendant by psychologist Eddie Chiu, Ph.D., and psychiatrist Dr. Anna  
8 Glezer, M.D., as recommended by the parties. After their respective re-evaluations, Dr. Glezer and  
9 Dr. Chiu reached the same conclusion that the defendant is not currently mentally competent to  
10 stand trial.

11 On May 31, 2012, a hearing was conducted pursuant to 18 U.S.C. § 4241(d) with the  
12 defendant and the counsel for both parties present. At the hearing, Dr. Glezer and Dr. Chiu testified  
13 that the defendant is not currently mentally competent to stand trial. Dr. Glezer's reports dated  
14 November 21, 2011 and May 18, 2012, as well as Dr. Chiu's reports dated July 25, 2011 and April  
15 30, 2012, were admitted into evidence. The government supported the conclusion of Dr. Glezer and  
16 Dr. Chiu that defendant is currently mentally incompetent. Defendant requested an alternative to  
17 an order committing him to the custody of the Attorney General for treatment in a Bureau of  
18 Prison's competency restoration facility. After full consideration of the evidence, this Court found  
19 by a preponderance of the evidence that "the defendant is presently suffering from a mental disease  
20 or defect rendering him mentally incompetent to the extent that he is unable to understand the nature  
21 and consequences of the proceedings against him or to assist properly in his defense" 18 U.S.C.  
22 § 4241(d). The defendant was remanded to the custody of the Attorney General through the United  
23 States Marshal Service pursuant to 18 U.S.C. § 4241(d). This Court excluded time under the Speedy  
24 Trial Act, 18 U.S.C. § 3161(h)(1)(A), from the date of the hearing on May 31, 2012 to the date of  
25 this Court's final determination on the issue of defendant's mental competency following restoration  
26 treatment under 18 U.S.C. § 4241.

1           **IT IS ORDERED** as follows:

- 2           1. Pursuant to 18 U.S.C. § 4241(d), the defendant is committed to the custody of the  
3           Attorney General for placement in a suitable facility “for a reasonable period of time,  
4           not to exceed four months, as is necessary to determine whether there is a substantial  
5           probability that in the foreseeable future he will attain the capacity to permit the  
6           proceedings to go forward.” 18 U.S.C. § 4241(d)(1). If the Attorney General,  
7           through the Bureau of Prisons, determines that “an additional reasonable period of  
8           time” beyond the four-month period is required to complete the competency  
9           restoration treatment pursuant to 18 U.S.C. § 4241(d)(2), such application must be  
10          approved by this Court.
- 11          2. A status conference is set for September 27, 2012 at 2 p.m. before this Court to  
12          consider the issue of defendant’s restorability. If the Attorney General, through the  
13          Bureau of Prisons, cannot complete the competency restoration treatment by  
14          September 27, 2012, the attorneys for the parties shall file a stipulation continuing  
15          the status conference to a date within the period of time authorized by this Court for  
16          completion of such treatment. At the status conference, it will be determined  
17          whether:
- 18                 a) It is agreed that the defendant has been restored to competence and  
19                   can proceed with defending this case; or  
20                 b) To hold an evidentiary hearing pursuant to 18 U.S.C. § 4241(e) to  
21                   determine defendant’s competency to stand trial.

23           **IT IS FURTHER ORDERED** that the attorney for the United States shall provide a copy  
24          of the aforementioned reports prepared by psychiatrist Dr. Anna Glezer, M.D., and psychologist  
25          Eddie Chiu, Ph.D., to the Bureau of Prisons in connection with defendant’s placement under  
26          18 U.S.C. § 4241(d).

1           **IT IS FURTHER ORDERED** that the Clerk of the Court shall deliver a certified copy of  
2 this Order to the United States Marshal Service and said copy shall serve as the commitment order  
3 for the defendant.

4           **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide a certified copy of  
5 this Order to Richard B. Mazer, attorney for the defendant, 99 Divisadero Street, San Francisco, CA  
6 94117, and to Assistant United States Attorney Deborah R. Douglas, 450 Golden Gate Avenue, Box  
7 36055, San Francisco, California 94102.

8           **IT IS FURTHER ORDERED** that the time under the Speedy Trial Act, 18 U.S.C.  
9 § 3161(h)(1)(A), shall continue to be excluded from the date of the hearing on May 31, 2012 to the  
10 date of this Court's final determination on the issue of defendant's mental competency following  
11 restoration treatment pursuant to 18 U.S.C. § 4241.

12           **IT IS FURTHER ORDERED that the parties shall submit a joint status report by no  
13 later than September 20, 2012.**

14           **IT IS SO ORDERED.**

15           Dated: June         4      , 2012

  
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HONORABLE JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE